Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Staton Holdings, Inc. d/b/a Staton Wholesale,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
MCI WorldCom Communications, Inc.	)	File No. EB-02-TC-F-008
	)	
and	)	
	)	
Sprint Communications Company, L.P.,	)	File No. EB-03-TC-F-002
	)	
Defendants.	)	

ORDER ON RECONSIDERATION

Adopted: May 3, 2010 **Released: May 5, 2010**

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration,[1] we deny a Petition for Reconsideration filed by Staton Holdings, Inc., d/b/a/ Staton Wholesale ("Staton") of an Order issued by the Enforcement Bureau ("Bureau") concerning Staton's formal complaints against MCI WorldCom Communications, Inc. ("MCI"), and Sprint Communications Company, L.P., ("Sprint").[2] The complaints alleged that Staton acquired the right to use 1-888-888-8888 ("All Eights Number"),[3] and that defendants MCI and Sprint transferred the rights to use this number from Staton to a third party without Staton's consent,[4] in violation of sections 1, 201(b), and 251(e)(1) of the Communications Act of 1934, as amended (the

[1] The Enforcement Bureau has referred this Petition for Reconsideration to the full Commission pursuant to 47 C.F.R. § 1.106(a)(1).

[2] *See Staton Holdings, Inc. d/b/a Staton Wholesale, Complainant, v. MCI Worldcom Communications, Inc., and Sprint Communications Company, L.P., Defendants*, Order, 19 FCC Rcd 8699 (EB 2004) ("*Staton Order*").

[3] Staton Complaints at 9.

[4] *Id*. at S-1, 4, 5, 14, 15, 16, 17, 18.

"Act"),[5] and several Commission orders dealing with the assignment of toll free numbers. The *Staton Order* granted in part Staton's complaint against MCI, but denied Staton's complaint against Sprint.[6] Staton's prayer for relief, that the All Eights Number be re-assigned to Staton, was denied.[7]

II. BACKGROUND

2. Staton has used the telephone number 1-800-888-8888 in its business continuously since it was obtained in early 1990.[8] It first informed MCI in June 1995 that it wanted to be assigned the All Eights Number and later in April 1998 reiterated this request under its right of first refusal to reserve equivalent "888" numbers.[9] Effective September 25, 1998, Staton had the right to use the All Eights Number.[10] MCI billed Staton for the All Eights Number for consecutive time periods starting September 1998 through a billing period ending on November 14, 2000.[11] MCI apparently did not bill Staton for the period November 15, 2000 to December 14, 2000, but did send a bill to Staton for the period December 15, 2000 through January 14, 2001.[12]

3. The *Staton Order* found that MCI acted negligently when it disconnected the All Eights Number from Staton's Corporate Identifier Number on October 27, 2000.[13] MCI readily admitted that this was the result of an error by a former MCI employee.[14] On November 2, 2000, MCI assigned the All Eights Number to Call Interactive's Corporate Identification Number, while leaving the number in hold status.[15] On January 4, 2001, the All Eights Number was assigned to Call Interactive.[16] MCI received a Letter of Authorization from Call Interactive dated April 11, 2001 to have the All Eights Number ported

[5] 47 U.S.C. §§ 151, 201(b), 251(e)(1).

[6] Although Staton filed its complaints ("Staton Complaints") in one pleading, Commission staff assigned different file numbers for each individual defendant (MCI and Sprint). Therefore, the Staton Complaints referred to throughout this order on reconsideration are identical in all respects.

[7] *Staton Order*, 19 FCC Rcd at 8708, para. 30.

[8] Staton Complaints at 6.

[9] Staton Complaints at 8-9. Section 251(e)(1) of the Act grants the Commission the jurisdiction to administer telecommunications numbering, and was used as the basis for creating the limited exception to the first-come, first-served policy by permitting a right of first refusal for the 888 set-aside numbers. *See Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058 (1998).

[10] Staton Complaints at 9.

[11] Staton Complaints, Exhibit H.

[12] *Id*.

[13] *Staton Order*, 19 FCC Rcd at 8704-05, para. 16.

[14] MCI Opposition at 3; *see also Staton v. MCI*, File No. EB-02-TC-F-008, Answer of MCI WorldCom Communications, Inc., filed by MCI on September 22, 2003. ("MCI Answer") at 3, 5, 11, 16, and 18.

[15] MCI Answer at 17.

[16] *Id.* at 18; *see also* MCI Answer, Exhibit 2.

to Sprint.[17] On April 18, 2001, Sprint became the Responsible Organization ("RespOrg") for the All Eights Number.[18]

4. Staton stated that it first became aware that it was disconnected from the All Eights Number in June 2001.[19] Staton contacted MCI and Sprint in June to have the number restored to Staton.[20] At that time, however, Call Interactive was already using the All Eights Number. Staton filed complaints against MCI and Sprint on December 20, 2002.[21] The *Staton Order* decided these complaints on May 13, 2004. Staton filed a Petition for Reconsideration on June 15, 2004 ("Petition"). MCI and Sprint filed Oppositions to the Petition on June 24, 2004.[22] Staton filed a Reply to the Oppositions on July 6, 2004 ("Staton Reply"). On September 8, 2005, Staton filed a Supplement to Petition for Reconsideration ("Supplemental Petition"). Further, on May 18, 2006, Staton filed a Second Supplement to Petition for Reconsideration ("Second Supplemental Petition"). MCI filed a Reply to Staton's Second Supplemental Petition on June 12, 2006;[23] on June 27, 2006, Staton responded with a Reply to MCI's pleading ("Staton Second Supplemental Reply").[24]

III. DISCUSSION

5. Staton bases its Petition on three arguments, contending that: (1) the Bureau wrongfully denied Staton a full evidentiary hearing; (2) there was sufficient evidence to prove willful misconduct on the part of MCI; and (3) Staton has quantified its actual damages from the loss of the All Eights Number and thus the Bureau erred when it determined the equities in this case did not favor Staton. Staton requests that its Petition be granted, and that the Bureau then conduct a full investigation of the matter, including allowing Staton the right to examine all witnesses who were involved with the reassignment of the All Eights Number and all parties that would be affected by the return of the number to Staton.[25]

6. The Commission's rules "do not allow reconsideration requests for the purpose of allowing a petitioner to reiterate arguments already presented."[26] This is particularly true where a

[17] *See* MCI Answer, Exhibit 1.

[18] *Id*. at 18.

[19] Staton Complaints at 12.

[20] *Id*. at 12; *see also* Staton Complaints, Ex. L.

[21] *See Staton Order*, 19 FCC Rcd at 8699, n.2.

[22] Staton's Petition is primarily dedicated to the Bureau's findings regarding MCI. It does not address Sprint except peripherally, naming Sprint in the Petition because Sprint is the current RespOrg for the toll free vanity number 888-888-8888 ("All Eights Number"). MCI's Opposition will be referred to as "MCI Opposition."

[23] MCI captions its pleading as a reply rather than an opposition.

[24] Staton captions its pleading "Reply to Opposition to Second Supplement to Petition for Reconsideration."

[25] Petition at 9.

[26] *Applications of Vodafone Airtouch, PLC and Bell Atlantic*, Order on Further Reconsideration, 18 FCC Rcd 8161 (2003). *See also Policies Regarding the Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations,* Memorandum Opinion and Order, 4 FCC Rcd 2276, 2277 (1989) ("It is well established that reconsideration will not be granted merely for the purpose of again debating matter on which the agency has once deliberated and spoken. The public interest in expeditious resolution of Commission proceedings is done a disservice if the Commission readdresses arguments and issues it has already considered."); *Simplification of the*

petitioner "advances arguments that the Commission considered and rejected in a prior order."[27] If this were not the case, the Commission "would be involved in a never ending process of review that would frustrate the Commission's ability to conduct its business in an orderly fashion."[28]

7. Staton's Petition is based upon facts and arguments that the Bureau already considered and rejected in the *Staton Order*. Staton introduces no new evidence in its Petition. Indeed, throughout the Petition, Staton's primary contention is that there was adequate evidence already in the record to find for Petitioner. The only new argument is Staton's contention that it did not receive an adequate hearing because it was not, according to Staton, afforded the opportunity to question witnesses in person. Staton's Reply is devoid of new arguments, focusing on: (1) a lack of live witness testimony it contends should have been required in this proceeding; and (2) listing evidence already in the record as to why Staton contends the Bureau's conclusions in the *Staton Order* were incorrect. Despite the lack of new evidence in its Petition, we have considered Staton's arguments herein and reject them for the reasons set forth below.

A. The Bureau Provided Staton the Opportunity to Plead Its Case Fully

8. Staton's only new argument is based on the fact that it did not conduct live examinations of witnesses, in particular of MCI employees, prior to the issuance of the *Staton Order*, maintaining that it was not given the opportunity to do so.[29] Staton also contends that MCI did not adequately explain the circumstances regarding the re-assignment of the All Eights Number, but simply recounts the events as to how the number was purportedly released.[30] Without the opportunity to question witnesses to the event, Staton argues that the Bureau could not have decided whether MCI acted willfully or negligently.

9. Staton is incorrect that the testimony of live witnesses is necessary to resolve formal complaints such as Staton's. As set forth in section 1.720 of our rules, formal complaint proceedings, such as this one, "are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments."[31] In *American Message Centers v. FCC*, the court, in endorsing the Commission's procedures governing formal complaints, stated:

> [T]he Commission's "formal complaint proceedings, unlike court litigation or administrative-trial type hearings, are often resolved solely on the written pleadings. These pleadings must therefore stand on their

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Licensing and Call Sign Assignment Systems for Stations in the Amateur Radio Service, Memorandum Opinion and Order, 87 FCC 2d 501, 505 (1981).

[27] *See Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order, 17 FCC Rcd 8520, 8525 (2002) (citing 47 C.F.R. § 1.429 (procedures for filing petition for reconsideration in a rulemaking context)).

[28] *Applications of Warren Price Communications, Inc. Bay Shore, New York, et al., for a Construction Permit for a New FM Station on Channel 276 at Bay Shore, New York*, Memorandum Opinion and Order, 7 FCC Rcd 6850, n.1 (1992).

[29] Petition at 2, 3.

[30] *Id.* at 2.

[31] 47 C.F.R. § 1.720.

> own and provide the factual underpinnings for a decision on the merits." *Amendment of Rules Governing Procedures to be Followed when Formal Complaints Are Filed against Common Carriers*, 3 FCC Rcd 1806, 1807 at ¶8 (1988). Accordingly, the Commission's fact-pleading rules require a petitioner to plead "all matters concerning a claim . . . fully and with specificity," 47 C.F.R. § 1720(a) (1994), by providing a "complete identification or description, including relevant time period, of the communications, services, or other carrier conduct complained of," *id*. at § 1721(a)(6), supported by "relevant documentation or affidavit," § 1720(c).[32]

10. In addition, Staton's contention that the lack of live examination of witnesses in this proceeding was due to the actions of the Bureau is misplaced. It is incumbent upon the Complainant to request such an examination and Staton never filed a motion requesting a deposition pursuant to section 1.729(h) of our rules.[33] Although the FCC has indicated that depositions will rarely be necessary in complaint cases, the Commission has noted that staff can "consider and modify or otherwise relax the discovery procedures in particular cases (including possible document production, depositions, and additional interrogatories)."[34] While it had the opportunity to do so, Staton never pursued the option of requesting depositions, or any other form of additional discovery.

11. Staton did request discovery in this matter by directing five interrogatories to MCI, to which MCI filed formal objections. The Bureau ordered MCI to respond to these interrogatories over its objections at the initial status conference, which MCI did on October 10, 2003. Staton did not file or serve any other interrogatories. Therefore, the sum total of Staton's discovery efforts against MCI in this proceeding was the submission of five interrogatories. As such, Staton's current contention that the proceeding was ripe with discovery possibilities that were never allowed, and that without the live testimony of witnesses a legitimate decision was impossible to reach, is not persuasive.[35]

12. Based on the foregoing, we reject Petitioner's contention that it was not afforded an opportunity to investigate fully the matters set forth in the formal complaints. Further, we reject Petitioner's related argument that it was denied an adequate hearing.

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[32] *American Message Centers v. FCC*, 50 F.3d 35, 40-41 (D.C.Cir. 1995) ("*AMC*"); *see also Amendment of Rules Governing Procedures to be Followed when Formal Complaints Are Filed against Common Carriers*, Report and Order, 8 FCC Rcd 2614, 2625-26 at para. 65 (1993) (explaining that there is no requirement for a formal hearing in section 208 complaint cases and noting that the Commission's rules contemplate disposition of complaints principally on a paper record).

[33] 47 C.F.R. § 1.729(h).

[34] *Id*.

[35] It has long been held that the burden of pleading and documenting a violation of the Act is on the complainant. *See AMC*, 50 F.3d at 41. The Commission's rules do not require a defendant to prove that it has not violated the Act. *Id*.

B. The Evidence Staton Presented Did Not Prove an Act of Willful Misconduct on the Part of MCI

13. Pursuant to both an agreement between MCI and Staton and a United States Bankruptcy Court order, Staton's claim for damages is capped at $1,000 if the Commission finds MCI liable for negligence but not willful misconduct.[36] Staton argues that it presented sufficient evidence to demonstrate willful misconduct.[37] It contends that MCI's actions constitute a systematic pattern demonstrating a willful disregard of the consequences of its actions. Staton relies on several facts, but also on certain assumptions in support of its argument. MCI admitted that an employee mistakenly disconnected the All Eights Number. Staton concludes that because of the "obvious attractiveness"[38] of the number, it took only four days for another party to express an interest in it. Staton contends that, after discovering that it had been disconnected from the number, MCI and Sprint promised to return the All Eights Number to Staton.[39]

14. Staton cites a Commission case in support of its contention that MCI's level of misconduct rises to a level that can be considered willful.[40] In *Ascom Communications*, Ascom Communications, Inc. ("Ascom"), a payphone service provider, discovered that callers were able to place fraudulent international calls from certain payphones in New York. When Ascom notified New York Telephone Company ("NYT") of this, it was apparent that NYT already knew about the fraudulent calls but had failed to notify Ascom. NYT also directed Ascom to seek redress from other carriers, despite the fact that it was NYT's error that caused the calls to be improperly directed to the other carriers and completed by those carriers. Accordingly, the Commission held that NYT's conduct was sufficient to be considered willful misconduct.[41]

15. The facts in *Ascom Communications* are distinguishable. Here, the evidence demonstrates that while MCI disconnected the number negligently, it was not aware that there was a mistake until contacted by Staton many months later.[42] By that time, MCI was not the RespOrg for the All Eights Number. While the process for correcting errors at MCI failed in this case, the evidence demonstrates an act of negligence, not willful deceit or a propagation of an error as in *Ascom Communications*.

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[36] *See* Joint Statement of Complainant and Defendants, filed October 1, 2003 at 9; WorldCom, Inc., Stipulation and Order Resolving Motion of Staton Holdings, Inc. for Relief from Automatic Stay to Pursue Administrative Relief, Chapter 11 Case No. 02-13533-AJG, United States Bankruptcy Court, Southern District of New York, July 15, 2003 at para 5.

[37] Petition at 3-7. Staton relies upon the alleged willful misconduct of MCI and Sprint in its attempt to prove that these entities violated sections 1, 201(b), and 251(e)(1) of the Act.

[38] Petition at 4.

[39] *Id*. at 4, 5.

[40] *Ascom Communications, Inc. v. Sprint Communications Company, L.P. and New York Telephone Company*, Memorandum Opinion and Order, 15 FCC Rcd 3223 (2000) (*Ascom Communications*).

[41] *Id.* at 3234, paras. 26-27.

[42] *Staton Order*, 19 FCC Rcd at 8702, para. 8.

16. Staton also cites *Gerri Murphy Realty, Inc. v. AT&T Corp.* to define what actions or omissions the Commission considers to be willful misconduct.[43] In *Gerri Murphy*, the FCC held that willful misconduct was "the intentional performance of an act with knowledge that the performance of that act will probably result in injury or damage, or. . . the intentional omission of some act, with knowledge that such omission will probably result in damage or injury."[44]

17. The Bureau already considered Staton's arguments based upon *Gerri Realty* in the *Staton Order*.[45] Staton's legal analysis is no more persuasive here than before because Staton has not presented evidence to contradict MCI's sworn testimony that the disconnection was an unintended error. That Staton communicated to MCI Staton's future plans for the number does not address the root issue of the reasons behind the disconnection. Staton's theory of complicity between MCI and Sprint to take the number from Staton was considered and rejected in the *Staton Order*.[46] Moreover, none of these alleged facts contradict the evidence proffered by MCI.

18. Staton's final citation in support of its contention that MCI engaged in willful misconduct is to *MCI v. Management Solutions*.[47] This case has little precedential value in this proceeding. There, the court rejected a recommended decision from a magistrate judge to grant a motion for summary judgment because the court believed that a genuine issue of fact remained to be tried. The MCI employees in that case allegedly stated that a problem was being resolved, and failed to affirmatively follow up on that representation, despite knowledge of possible consequences.[48] The issue to be tried was whether such representations and the failure to follow up constituted willful misconduct. Here, even if MCI had informed Staton after the discovery of the disconnection that it would attempt to retrieve the All Eights Number, it was no longer the RespOrg for the number and could not, on its own, retrieve the number. Thus, any purported failure to follow up here is unlike that in *Management Solutions*, in which follow-up actions would have resolved the initial problem. Moreover, there is insufficient evidence in the record to find that MCI even agreed to attempt to do so.

19. Finally, Staton completely fails to refute sworn testimony concerning an employee error at MCI that resulted in the disconnection of the number.[49] Staton provides no evidence that contradicts this testimony. Although Staton contends that this testimony is not probative, we disagree. This was not the only evidence that MCI presented. In fact, the preponderance of the evidence clearly demonstrated negligence on the part of MCI, and the Bureau so held.[50] It is incumbent upon the complainant to present evidence of willful misconduct. Staton failed to do so in the proceeding, and does not introduce any new facts in its Petition.

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[43] *Gerri Murphy Realty, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 19134 (2001) (*Gerri Murphy*).

[44] *Id.* at 19142, para. 19 (citing *Berner v. British Commonwealth Pac. Airlines, Ltd*., 346 F.2d 532, 536- 37 (1965), cert. denied, 382 U.S. 983 (1966)).

[45] *See Staton Order*, 19 FCC Rcd at 8705, para. 17.

[46] *Id.* at 8706, para. 23.

[47] *MCI v. Management Solutions, Inc*., 798 F.Supp. 50 (D.Me. 1992).

[48] *Id*.

[49] Petition at 2.

[50] *Staton Order*, 19 FCC Rcd at 8704-05, para 16.

20. Based on the foregoing, we find that the Bureau was correct in holding that Staton did not meet its burden of proof regarding the issue of willful misconduct on the part of MCI. Staton did not, and has not, in its Petition provided sufficient evidence to demonstrate that MCI's actions in disconnecting Staton from the All Eights Number was the result of willful misconduct. Accordingly, we deny Staton's Petition in this regard.

C. The Bureau's Initial Ruling on Equitable Relief was Proper

21. Staton contends the Bureau erred in denying it equitable relief by maintaining it quantified its actual damages from the loss of the All Eights Number.[51] Staton lists a number of activities that it states were forthcoming or had been undertaken before the number was disconnected.[52] The only actual figure set forth, however, is $100 million, which Staton describes as the value of an initial public offering ("IPO") for a telecommunications entity to be created by Petitioners in connection with the All Eights Number. Again, however, Staton fails to provide any new evidence to support its claim.

22. Looking first at the $100 million figure, even Staton's Petition is rife with speculation. First, Staton states that it "intended" to assign the All Eights Number to InfoEights (a wholly owned subsidiary of All Eights, L.L.C.). Staton "applied" for trademarks for "All Eights" and "InfoEights." Staton "solicited venture capitalists" and was "advised" that Staton "probably could" expect $100 million at an initial public offering "after" the "initial steps to form a public company had been taken."[53] From all this, Staton contends that it has quantified a loss of $100 million.

23. The Bureau agreed that Staton incurred some monetary loss as a result of MCI's negligent disconnection of service.[54] As for the loss of $100 million, however, aside from Staton's bald assertions, there is a lack of credible evidence to support such damages. By Staton's own admission it had many steps to take before an IPO could be offered, even if it was eventually carried to fruition. What is lacking is sufficient evidence that supports the loss of a quantifiable monetary figure.

24. Further, the Petition does not address the many other factors set forth in the *Staton Order* where the equities weigh against Staton. Among other things, Staton did not file a complaint with the FCC until another 18 months had passed after the discovery that the All Eights Number had been reassigned, during which time Call Interactive continued to use the number.[55] A delay for this length of time substantially undercuts Staton's equitable arguments and actually strengthens Call Interactive's equitable claim. Based on all the foregoing, we deny Staton's contention that it was wrongfully denied equitable relief.

D. Staton's Supplement to Petition for Reconsideration Fails to Include New Evidence

25. Staton's Supplemental Petition is based on an allegation that the All Eights Number may not be in active use.[56] According to Staton, it contacted an entity that Staton alleges currently has the

[51] Petition at 7, 8.

[52] *Id*.

[53] *Id*.

[54] *Staton Order*, 19 FCC Rcd at 8707-08, para. 24.

[55] *Id*. at 8708, para. 28.

[56] Supplement to Petition at 3.

right to use the All Eights Number and, again according to Staton, this entity claimed that the number was in use.[57] Even though Staton doubts this is true, it has not established otherwise. Staton's Supplement to Petition does not set forth any new facts and thus cannot, on its own, alter the outcome of the *Staton Order*.

E. Staton's Second Supplement to Petition for Reconsideration Fails to Justify Reopening the Record

26. Staton's Second Supplemental Petition seeks to reopen the record based upon information that Staton characterizes as "new evidence [that] goes to the heart" of the Bureau's conclusion that negligence rather than willful misconduct caused MCI to disconnect the All Eights Number.[58] The Second Supplemental Petition presents information gleaned from Staton's February 2006 deposition of an MCI employee in connection with Staton's ongoing lawsuit against Call Interactive.[59] In particular, Staton asserts that the deposition bolsters its claim of willful misconduct on the part of MCI and further demonstrates that MCI violated section 52.103(d) of the Commission's rules by reassigning the All Eights Number to Call Interactive without first placing it in the spare number pool.[60]

27. Staton fails to justify either reopening the record or consideration of its newly-proffered evidence and claims of unlawful conduct. The Commission's rules make clear that absent a compelling public interest, reconsideration is not available to either revisit questions that have already been decided or to introduce new evidence that could have been discovered previously with due diligence.[61] First, Staton does not identify a public interest in reopening the record. Second, the fact that Staton did not earlier obtain all the evidence contained in the February 2006 deposition does not mean that it could not have done so. The identity of the deponent was available to Staton no later than September 2003;[62] Staton could have sought greater discovery in this proceeding to depose this individual or to obtain information about particular events in question but it did not.[63]

28. Staton's new assertion that MCI has violated section 52.103(d) likewise does not warrant reopening the record. Staton's complaint does not specifically plead such a violation, and its general claim that MCI violated "various FCC rulings"[64] cannot be translated into an allegation that MCI violated

[57] *See* Supplement to Petition, Affidavit of Christopher M. McCaffrey at 3.

[58] "A rehearing of particular issues may be made necessary by new and relevant evidence where the new evidence 'might have gone far toward undermining the basis for the Commission's conclusion.'" Second Supplemental Petition at 4 (quoting *Eagle Broadcasting Company v. FCC*, 514 F.2d 852, 854 (D.C.Cir. 1975)).

[59] *Staton Holdings, Inc. v. First Data Corporation*, Civil Action No. 3-04-CV-2321-P, U.S.D.C. (N.D. Tx).

[60] Second Supplemental Petition at 5. Section 52.103(d) provides "Toll free numbers may remain in disconnect status for up to 4 months. . . . All toll free numbers in disconnect status must go directly into the spare category upon expiration of the 4-month disconnect interval." 47 C.F.R. § 52.103(d).

[61] 47 C.F.R. § 1.106(c).

[62] *See* MCI Answer at 16-17.

[63] *See* para. 11, *supra*.

[64] Without elaboration, Staton cites several Commission orders and letters involving toll free service access codes. Staton Complaints at 4, n. 7.

section 52.103(d) of the rules and any related Commission rulings. There is no justification for reopening the record to permit Staton to pursue a claim that it did not include in its complaint.[65]

29. Substantively, Staton's Second Supplemental Petition and the underlying deposition do not undermine the *Staton Order*'s finding of negligence or justify reopening the record to explore this issue or any other newly-claimed violations. Indeed, Staton's recitation of the so-called new evidence largely repeats the history of this dispute that is contained in previous pleadings and the *Staton Order* itself.[66] Moreover, besides inference and conclusory allegations, Staton does not explain the particular significance of any new facts to the question of willful misconduct or to the specific violations averred in its complaint. Like Staton's previous claims of willful misconduct, Staton's new pleadings appear to suggest – but fail to establish – that MCI and Call Interactive acted deliberately to take the All Eights Number from Staton.[67]

30. Staton's Second Supplemental Petition does not address the initial action that removed the All Eights Number from Staton's control: MCI's October 27, 2000 disconnection of the number from Staton's Corporate Identifier Number, which enabled the later steps by MCI to reassign the number from Staton to Call Interactive.[68] Staton ignores the fact that this disconnection is the critical act by MCI because it separated the All Eights Number from Staton and rendered the number available for reassignment to any party, not just Call Interactive.[69] MCI admitted negligence in disconnecting Staton's Corporate Identifier Number from the All Eights Number, and Staton provides no new evidence to rebut this sworn admission or to justify reopening the record to reassess the Bureau's conclusions in this regard.

[65] A formal complaint must contain "[c]itation to the section of the Communications Act and/or order and/or regulation of the Commission alleged to have been violated." 47 C.F.R. §1.721(a)(4).

[66] Second Supplemental Petition at 2-4; Staton Second Supplemental Reply at 7; MCI Answer at 16-18; *Staton Order*, 19 FCC Rcd at 8701-02. .

[67] *See* para.18, *supra*.

[68] *See* para.3, *supra; Staton Order*, 19 FCC Rcd at 8701-02, paras. 5-7 (identifying actions taken by MCI to reassign the All Eights Number to Call Interactive). Staton relies on conjecture and unsupported conclusions to assert that the All Eights Number could not have been taken from Staton but for MCI's actions *after* the October 27, 2000 disconnection.

[69] The fact that Staton cannot demonstrate that it would have been any more likely to recover the All Eights Number had it been placed in the spare number pool confirms that it is the initial negligent act of disconnection that is crucial here, not the fact that MCI subsequently assigned the All Eights Number to a particular party, Call Interactive.

IV. ORDERING CLAUSE

31. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201(b) and 208 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 208, that the above-captioned Petition for Reconsideration of Staton Holdings, Inc., is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary